

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LARRY POLL**  
Claimant

**TYSON FRESH MEATS INC**  
Employer

**APPEAL 17A-UI-02210-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/29/17  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 16, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a discharge for misconduct. The parties were properly notified about the hearing. Claimant requested a pohnpian (Micronesian) interpreter. In his appeal, claimant stated that if the agency was not able to locate an interpreter he would be able to provide his own interpreter for the hearing. The agency contacted national and local interpreting services in an attempt to locate a pohnpian (Micronesian) interpreter who could participate in the hearing. The agency was unable to do so. Finally, by March 31, 2017, the agency still had not located an interpreter and therefore scheduled the hearing for April 21, 2017, with the intention of having claimant's friend act as an interpreter if no other qualified interpreter could be identified. On the day of the hearing, the administrative law judge again contacted CTS Language Link and requested a pohnpian (Micronesian) interpreter. No interpreter was available. The administrative law judge went ahead with the telephone hearing on April 21, 2017. Claimant participated personally and his friend and interpreter Admira Rosario. Rosario swore or affirmed to truthfully and accurately interpret all questions asked and all answers given to the best of her ability. Employer did not answer the phone when called at the number it provided for the hearing.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in 2016. Claimant last worked as a full-time production worker. Claimant was separated from employment on January 31, 2017, when he was discharged.

Claimant does not know why he was discharged. One week before his separation from employment, claimant was informed he had two and one-half attendance points remaining. Claimant did not have any absences after that date.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the

carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer’s interests. *Henry v. Iowa Dep’t of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp’t Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant was terminated. Employer failed to establish claimant was terminated for job-related misconduct.

**DECISION:**

The February 16, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Christine A. Louis  
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Decision Dated and Mailed

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